IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1149 (MS) OF 2003

Krishna Kumar Sharma Adv.
S/o late Shri Lati Ram,
R/o Sardaronwali Haveli,
Upper Road,
District-Haridwar. .....Petitioner.

Versus

1. District Judge, Haridwar.
2. City Magistrate/R.C. & E.O. Haridwar.
3. Brij Mohan Chaklan, Secretary, Tirth Purohit Kendriya Panchayat Office at Mohalla Chaklan, Jwalapur, Haridwar, District-Haridwar.
4. Harish Chand, S/o late Shri Nathu Ram,
5. Krishna Kumar, S/o late Shri Nathu Ram,
6. Anil Kumar, S/o late Shri Nathu Ram,
7. Smt. Kaushalya Devi, Wd/o late Shri Nathu Ram,
   All residents of Vikas Colony, Opposite Jamna Talkies, Jwalapur Road, Haridwar, District-Haridwar.

.....Respondents.

Dated: 07.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Pankaj Miglani, Advocate for the petitioner and Standing Counsel for the respondents no. 1 and 2.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 22.08.2003 passed by the District Judge, Haridwar in R.C.R. No. 10/99 titled as Krishna Kumar Sharma v. City Magistrate-1/RC &

E.O. Haridwar as well as the order dated 31.03.1999 passed by the learned RC & EO/City Magistrate Haridwar in Case No. 45/78 and 4/97 titled as Krishna Kumar Sharma v. City Magistrate Haridwar (Annexures No. 5 and 7 to the writ petition) passed by the respondent no. 1 rejecting the application of the petitioner.

Briefly stated, the proceedings for vacancy were initiated before the Rent Control and Eviction Officer. The Rent Control and Eviction Officer has recorded a finding that there is no vacancy in the premises vide order dated 31st March, 1999. Against the said order only revision lies under Section 18 of the U.P. Act No. 13 of 1972 instead of writ petition unless the order is passed under Section 16 (1) (a) and (b) of the U.P. Act No. 13 of 1972.

In ***Ganpat Roy and others Vs. Additional District Magistrate and others 1985(2) ARC (FB) Page 73,*** it has been held as under:-

"The court further observed that Section 18 gave a right of appeal against an order of allotment or release and that any person aggrieved by such an order could prefer an appeal to the District Judge and if the order of allotment or release was varied or prescribed by the District Judge in appeal, the District Magistrate had under Section 18(3) the power to place the parties back in the position which they would have occupied but for such order. The Court further printed out that the Act did not provided for a hearing at the stage when the District Magistrate passed an order of allotment or release but any person aggrieved by such an order was entitled to ask the District Magistrate to review his order and if in the meanwhile any person in possession of the building had been evicted, the District Magistrate had the

power, if he set aside or modified the order of allotment or release, to put the applicant back in possession."

In the aforesaid judgment, it has been held that only the order declaring the vacancy is amenable to revisional jurisdiction and after the order is passed, no revision lies on the ground of non-maintainability.

Writ petition is dismissed on the ground of alternative remedy. No order as to costs.

However, it will not debar the petitioner from initiating proceedings before any court of law.

(Rajesh Tandon, J.)

07.08.2006
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